

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL DESMOND,

Plaintiff,

-against-

ECLERX; ECLERX LLC d/b/a ECLERX,
ECLERX SERVICES LIMITED, and
AGILYST INC.,

Defendants.
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NOT FOR PUBLICATION

ORDER

18-CV-313 (CBA) (JO)

AMON, United States District Judge:

Plaintiff Michael Desmond brought this action in January, 2018 alleging violations of the Employee Retirement Income and Security Act. 29 U.S.C. § 1001 et seq. Specifically, Desmond alleges that as an employee of the Defendants, he was a participant in an employee benefit plan covering disability. (D.E. # 1 (“Compl.”) ¶ 12.) However, when his employment was terminated, Desmond alleges he was entitled to continuing disability benefits under the terms of the employee benefit plan, but that the Defendants failed and refused to provide Desmond with the necessary information and documentation that would afford him the opportunity to submit a claim as a participant of the employee benefit plan. (Compl. ¶¶ 14–16.) Desmond further alleges that the Defendants breached their duty to him by misleading him into believing that he was not a participant in the employee benefit plan at the time his employment was terminated. (Compl. ¶ 13.)

On March 6, 2018, Desmond's attorney, Paul Dashefsky, filed a motion before Magistrate Judge Orenstein to withdraw as counsel. (D.E. # 8.) In the motion, Mr. Dashefsky notified Judge Orenstein that Defendant's counsel had provided him with an Agreement and General Release executed by Desmond in February, 2015, and that Desmond had received a severance payment in consideration for executing this agreement. (Id.) Mr. Dashefsky was unaware of the existence of this release prior to agreeing to represent Desmond, and once made aware, was unable to agree with Desmond on a way to proceed further with the case. (Id.)

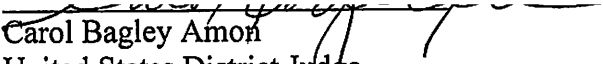
On March 22, 2018, Magistrate Judge Orenstein granted Mr. Dashefsky's motion to withdraw as counsel. (D.E. # 11.) Judge Orenstein granted Desmond two months to seek new counsel, and directed Desmond, or any new counsel on Desmond's behalf, to file a letter by May 22, 2018, "specifying whether the plaintiff intends to prosecute this action notwithstanding the existence of an apparent release of the claims currently pending." (Id.) On June 15, 2018, the Defendants filed a motion to dismiss the case, as Desmond had not submitted a letter by the May 22 deadline. (D.E. # 14). This Court issued an Order to Show Cause on June 20, 2018, directing Desmond to file a letter on the docket by July 11, 2018, "stating why this case should not be dismissed for failure to prosecute, given [Desmond's] failure to comply with the Court's May 22, 2018 deadline to inform the Court whether he intends to proceed with this action." (D.E. dated June 20, 2018).

To date, Desmond has not provided the Court with any indication of his intentions with respect to this lawsuit, and the time has passed for him to do so. As such, the Court grants Defendants' motion to dismiss, and dismisses this action without prejudice. The Court respectfully directs the Clerk of Court to enter judgment and to close the case. The Court also

respectfully directs the Clerk of Court to mail a copy of this order to Desmond at his listed address.

SO ORDERED.

Dated: July 18, 2018
Brooklyn, New York

s/Carol Bagley Amon

Carol Bagley Amon
United States District Judge